IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.114 OF 2005

Padmavati Sunder Shetty & Ors. ...Appellants

Vs.

Rashmi Dhiraj Chheda & Ors. ...Respondents

Mr. Santosh Shetty i/b Mr.M.P.Vashi for the Appellants
Ms Manisha Shet i/b M/s Harishchandra & Co. for the Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.
DATED: JANUARY 31, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the original Defendant Nos.2 to 4 for challenging the order dated 29th April 2003. By the impugned order, earlier order appointing the Court Receiver has been confirmed till the final disposal of the suit. The Appellants have been restrained from parting with possession of the suit premises. The Court Receiver is directed to give six weeks time to the Defendant Nos.2 to 4 for payment of arrears. Pursuant to the ad-interim order passed by this Court, the Appellants have deposited Rs.1,00,000/- in this Court.

2. The learned Counsel for the Appellant made a grievance that the learned Trial Judge could not have directed the Court Receiver to fix monthly amount of compensation retrospectively from 1st January 1997. He submitted that the royalty fixed by the Court Receiver is excessive.

3. In my view, the order passed by the Trial Court is equitable order. The net result of the said order is that,

possession of the Appellants has been protected. If any amount of compensation is ordered to be paid by the Appellants, the payment of the said amount is naturally subject to final result of the suit and subject to further orders which will be passed in the suit. If the Appellants have any grievance regarding the quantum of amount of royalty or compensation fixed by the Receiver, the Appellants can always apply to the Court in which the suit is pending for appropriate reliefs.

4. The order passed by the learned Trial Judge is a discretionary order and no interference is called for in the Appeal from Order filed under Order XLIII Rule 1 of Code of Civil Procedure, 1908. Hence, Appeal is dismissed with no order as to costs.

5. It is obvious that the Trial Court will decide the suit on its own merit without being influenced on the prima facie observations made in the impugned order.

6. The sum of Rs.1,00,000/-, if deposited by the Appellants in this Court, shall be transferred immediately to the City Civil Court, Bombay. After the said amount is transferred, the learned Judge of the City Civil Court will pass an appropriate order regarding investment/disbursement of the said amount.

7. Parties to act upon an authenticated copy of this order.

Judge.